(16)

No. 95-489

In the

Supreme Court of the United States

October Term, 1995

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE AND DOUGLAS L. JONES, AS TREASURER,
Petitioners,

v.

FEDERAL ELECTION COMMISSION,
Respondent.

On Certiorari to the
United States Court of Appeals
For the Tenth Circuit

BRIEF OF THE STATES OF KENTUCKY, CONNECTICUT, MINNESOTA, NEW MEXICO, OKLAHOMA AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF THE AMICI CURIAE

Amici are States which limit the amounts political parties can expend on inherently coordinated expenditures which expressly advocate the election or defeat of a

clearly identified candidate. These States' statutes permit unlimited spending for issue advocacy by political parties, and unlimited independent expenditures by individual members of political parties. However, inherently coordinated expenditures by a party to elect its nominee or defeat the nominee's opponent are regulated as contributions in order to prevent circumvention of the limits upon contributions to candidates.[1]

The Colorado Republican Federal Campaign Committee's ("CRC") argument that political party expenditures must be equated with truly independent expenditures, if adopted by this Court, would eviscerate these States' statutes, especially those states with public financing of some elections.[2]

Public financing was enacted because it provides the only vehicle under prevailing case law for limiting a candidate's aggregate expenditures.[3] Candidates accept the voluntary expenditure limits in exchange for partial public financing of their campaigns.[4] Allowing the candidate's

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[1]Twenty four States have enacted statutes limiting such expenditures by political parties. *See* Appendix A, *infra*. *See, e.g.*, Ky. Rev. Stat. §121A.050(1); Conn. Gen. Stat. §9-333t.

[2]Nine States have enacted public financing for some elections. *See* Exhibit B, *infra*.

[3]*Buckley v. Valeo*, 424 U.S. 1, 57 n. 65 (1976); *Republican Nat'l Comm. v. F.E.C.*, 487 F.Supp. 280 (S.D.N.Y.) (three-judge court), *aff'd.*, 445 U.S. 955 (1980).

[4]*See e.g., Vote Choice, Inc. v DeStefano*, 4 F3d 26 (1st Cir. 1993). *See also* footnote 43, *infra*.

party to make unlimited expenditures advocating the candidate's election or the opponent's defeat would eviscerate the spending limits that are the heart of public financing systems.[5]

CRC asks the Court to equate the inherently coordinated spending by political parties with the truly independent expenditures this Court has held may not be capped. However, *Buckley v. Valeo* squarely held coordinated expenditures may be regulated to prevent evasion of contribution limitations. This Court should not retreat from that holding.[6]

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[5]Because the State contribution limits apply only to those party expenditures that expressly advocate the election or defeat of a clearly identified candidate which are made in cooperation or consultation with the candidate or with the candidate's consent, Amici do not address CRC's argument that §441a(d)'s expenditure limitations unconstitutionally encompass any "electioneering message."

Amici also do not address the question whether the specific limits are "too low", *see* Brief For Petitioners at 23, as that question does not relate to the constitutional validity of equating coordinated expenditures made by a political party with contributions to the candidate. Moreover, the question whether the contribution limits are unconstitutionally low would be better answered by granting the writ in *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), petition for cert. filed, 64 U.S.L.W. 3561 (U.S. 2/7/96) (No. 95-128), currently pending before this Court on petition for writ of certiorari to the Eighth Circuit.

[6]424 U.S. at 35-37, 46, 46 n. 3, 78-79 ("...controlled or coordinated expenditures are treated as contributions rather than expenditures...").

SUMMARY OF ARGUMENT

CRC's principal attack upon the constitutionality of §441a(d) equates party expenditures with independent expenditures. Party expenditures are not, however, independent. They are inherently coordinated with the party's nominee.[7]

Contributions are not limited to gifts of money. Otherwise, contribution limitations could be easily evaded. Consequently, campaign finance regulations routinely define "contribution" to include expenditures by individuals, committees and parties that are not truly independent, but are coordinated with candidates' campaigns.[8]

Regulating inherently coordinated party expenditures as contributions serves the compelling state interest identified in *Buckley*, and is narrowly tailored to advance that interest. The compelling state interest recognized by this Court is not limited to preventing bribery of the candidate, but includes promoting the

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[7] *Id.* *See also* footnote 35, *infra*.

[8] *Buckley v. Valeo*, *supra* 424 U.S. at 24 n. 25, 46 n.53 ("Expenditures by persons and associations that are 'authorized or requested' by the candidate or his agents are treated as contributions under the [federal] Act."). *See, e.g.*, Alaska Admin. Code Tit. 2, § 50.313; Ariz. Rev. Stat. Ann. § --(5)(b)(vi); Cal. Gov't Code § 82015 (West); Colo. Rev. Stat. § 1-45-103; Conn. Gen. Stat. Ann. § 9-333b(a)(4)(West); Haw. Rev. Stat. § 11-207(a); Ky. Rev. Stat § 121.150(1); Me. Rev. Stat. Ann. Tit. 21-A, § 1015(5)(West); Mont. Admin. R. 44.10.517; N.Y. Elec. Law § 14-100(9)(3)(McKinney) and R.I. Gen. Laws § 17-25-10(a).

public's perception of the integrity of the electoral process. Public confidence in the process is as essential to self-government as the marketplace of ideas. Permitting unlimited issue advocacy and truly independent expenditures, while placing dollar limits on coordinated party expenditures, is narrowly tailored to advance that interest.

ARGUMENT

CRC makes essentially two arguments supporting its contention that §441a(d) is unconstitutional on its face. *First*, CRC argues that expenditures by political parties cannot be regulated as contributions, but must be treated constitutionally as independent expenditures.[9] *Second*, CRC argues that modern political parties are incapable of corrupting their nominees, so §441a(d) is not sufficiently narrowly tailored in advancing the States' compelling interest in deterring corruption, and the appearance of corruption, of elected officials.

There are short answers to both these contentions. *First*, expenditures by political parties are not truly independent, but are inherently coordinated with the party's nominee. This Court has long held that coordinated expenditures are properly regulated as

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[9] *See* Brief for Petitioners at 35 ("More fundamentally, regardless of whether the label 'expenditure' or 'contribution' is attached to the party's speech, the nature of the party conduct being restricted makes clear that the same protections must be afforded here as were afforded to the expenditures in *Buckley*, *MCFL*, and *NCPAC*").

contributions.[10] *Second*, the compelling interests recognized by this Court are not limited to actually corrupting candidates with "corruptive payments." Brief for Petitioners at 30. Otherwise, the Court would have stricken contribution limitations as overbroad and held that antibribery statutes are the extent to which States may regulate campaign finance.[11] Instead, this Court squarely held that the States' interest in preventing erosion of the public's confidence in our system of self government is compelling, and that regulating both contributions and coordinated expenditures is narrowly tailored to advance that interest by reducing the appearance that contributors subsequently obtain a *quid pro quo* influence upon public policy.

I. THE COMPELLING INTEREST IDENTIFIED IN *BUCKLEY* INCLUDES PREVENTING THE APPEARANCE OF CORRUPTION AND PROTECTING THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF THE POLITICAL PROCESS

CRC contends that the constitutionality of political party expenditures may be determined only by equating them with truly independent expenditures, even if the party expenditures are inherently coordinated with the candidate. CRC begins with the erroneous premise that the Court has never upheld an expenditure limitation, but

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[10] *See* footnote 6, *supra*, footnote 35, *infra*.

[11] 424 U.S. at 27-28.

has only upheld contribution limitations. Brief for Petitioners at 23. CRC reasons that political parties do not have contributors' capacity to corrupt candidates, and that limiting parties' coordinated expenditures therefore does not advance the States' interest in avoiding the appearance of corruption. Brief for Petitioners at 30-34. This argument simply misconceives the interests recognized by this Court as sufficiently compelling to warrant regulation of campaign finances.

In *Buckley*, appellants contended contribution limitations were not sufficiently narrowly tailored because they were not the least restrictive means available to deal with "proven and suspected quid pro quo arrangements."[12] Appellants contended that anti-bribery statutes and disclosure requirements were the maximum governmental regulation constitutionally allowable.[13] This Court rejected that contention and squarely held the States' compelling interests are not limited to "only the most blatant and specific attempts of those with money to influence governmental action."[14] Instead, the Court held the compelling interests include restoring "confidence in the system of representative Government,"[15] and upheld

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[12] 424 U.S. at 27.

[13] 424 U.S. at 27-28.

[14] 424 U.S. at 28.

[15] 424 U.S. at 27, quoting, *Civil Service Commission v Letter Carriers*, 413 U.S. 548, 565 (1973).

limitations on both contributions and coordinated expenditures.[16]

CRC ignores the square holding in *Buckley* and argues that modern political parties are incapable of corrupting individual candidates. CRC says:

> The government has been unable to prove that a limitation upon party expenditures is necessary to prevent corruption because modern political parties do not "corrupt" elected officials. ... Moreover, the stringent limit on sources of party funds and the comprehensive requirements of public disclosure prevent any theoretical use of parties **as a conduit for corruptive payments.**

Brief for Petitioners at 30 (emphasis supplied).

This argument misapprehends the central teaching of *Buckley*. The States' interests are not limited to "only the most blatant" bribes, but include the public's confidence in the integrity of the process; which is as essential to self-government as freedom of speech.[17]

The dispositive issue in *Buckley* was defining the scope of the States' interests which are sufficiently compelling to warrant narrowly tailored regulation of

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[16]*See* footnote 6, *supra*, footnote 35, *infra*.

[17]424 U.S. at 26-27.

campaign finance. In *Buckley*, this Court agreed with the D.C. Circuit that Congress had a compelling interest not only in preventing particular contributors' undue influence over particular candidates', but also in alleviating the public's perception that elected officials were responding only to moneyed interests rather than the public interest.

The *en banc* D.C. Circuit identified this interest as one that had been recognized previously by this Court:

> The Constitution also takes account of the governmental interest in curbing the appearance of undue influence, in order to avoid the corrosion of public confidence that is indispensable to democratic survival. In *Civil Service Commission v. Letter Carriers*, 413 U.S. 548, 565, 93 S.Ct. 2880, 2890, 37 L.Ed.2d 796 (1973), Justice White articulated this:
>
> > [I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be

> eroded to a disastrous extent.[18]

In *Buckley*, this Court also quoted *Civil Service Commission v. Letter Carriers*, explicitly reaffirming that the interest in avoiding corruption includes preserving public confidence in the integrity of the process:

> To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. ...
>
> Of almost equal concern as the danger of **actual** quid pro quo arrangements is the **impact of the appearance of corruption stemming from public awareness** of the opportunities for abuse inherent in a regime of large individual financial contributions. ... Congress could legitimately conclude that **the avoidance of the appearance of improper influence "is also critical ... if confidence in the system of representative Government is not to be eroded to a disastrous extent."**[19]

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[18]*Buckley v. Valeo*, 519 F.2d 821, 841 (D.C. Cir. 1975) (en banc), quoting, *Civil Service Commission v. Letter Carriers*, 413 U.S. 548 (1973)

[19]424 U.S. at 26-27, quoting *Civil Service Commission v. Letter Carriers*, 413 U.S. 548, 565 (1973) (emphasis supplied).

Accordingly, the compelling interests identified by this Court in *Buckley* included the interest in avoiding the public's perception that the political **process**, **itself**, was corrupt because the influence wielded by the special interests overwhelms the public's interest.[20] This Court specifically recognized that public confidence is essential to any system of representative self-government.

This threat to the political process was again recognized by this Court in *California Medical Association v. F.E.C.*, which identified the government's compelling interests as "preventing the actual or apparent corruption of the political **process**."[21] Subsequently, in *Federal Election Commission v. National Right to Work*, a unanimous Court emphasized that, in Buckley:

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[20]This erosion of the public's confidence in the integrity of the system was identified by the D.C. Circuit:

> Large contributions are intended to and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns. Senator Mathias [in the FECA Congressional Findings,] not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process.

Buckley v. Valeo, 519 F.2d at 838. Indeed, the D.C. court reproduced an opinion poll which revealed that in 1974, nearly 70% of voters agreed with the statement that "the government is pretty much run by a few big interests looking out for themselves [rather than] run for the benefit of all the people." *Id.* at 839.

[21]453 U.S. 182, 197-198 (1981)(emphasis supplied).

> we specifically affirmed the importance of preventing **both** the actual corruption threatened by large financial contributions and **the eroding of public confidence in the electoral process through the appearance of corruption.** These interests directly implicate "the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process."[22]

The compelling nature of the interest in protecting the integrity of the process was most recently reaffirmed in *Austin v. Michigan Chamber of Commerce*, where this Court once again looked beyond the financial quid pro quo to recognize Michigan's compelling interest in resisting:

> a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.[23]

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[22]459 U.S. 197, 208 (1982), quoting, *United States v. Automobile Workers*, 352 U.S. 567, 570 (1957), *See also Federal Election Commission v. Massachusetts Citizens For Life*, in which the Court similarly acknowledged "the historical role of contributions in corruption of the electoral process." 479 U.S. 238, 260 (1986)(emphasis supplied).

[23]494 U.S. 652, 660 (1990).

CRC attempts to distinguish *Austin*, and to distinguish political parties from corporations, PACs and unions, by arguing that "parties are not captive to narrow economic interests which are often viewed as corruptive." Brief for Petitioners at 32. This contention is belied by both the facts before this Court in *Buckley* and by the current pattern of political party contributions.

In *Buckley*, the D.C. Circuit noted that the agreed findings in that case established:

> [O]ne percent of the people accounted for 90 percent of the dollars contributed to federal candidates, political parties and committees. Just 2-3 percent, the wealthiest people in the country, are responsible for about 95 percent of the financing for Congressional elections.[24]

Moreover, the D.C. Circuit acknowledged that the Congressional findings demonstrated that the money was intended to buy influence rather than demonstrate support for either the candidate or the candidate's party:

> The findings document lavish contributions by groups or individuals with special interests to legislators from **both parties**, e.g., by the American Dental Association to incumbent Congressmen in California ...; by H. Ross Perot, whose company supplies data processing for medicare and medicaid

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[24]519 F.2d at 837.

programs, to members of the House Ways and Means and Senate Finance Committees, and the House Appropriations Subcommittee for HEW.[25]

Nor has the practice of special interests contributing to **both** political parties declined since the *Buckley* decision. As the authors of one article note:

> In the 1992 election cycle, the two major political parties raised a total of $83.4 million in soft money (Republican Party--$48.9 million; Democratic Party--$34.5 million). Of this total amount, $37.8 million (or 45%) was raised in contributions of $100,000 or more. The overwhelming majority of soft money contributions was concentrated among the big business interests seeking to gain further influence in Washington. The financial, insurance, and real estate industries gave a total of $10.9 million in soft money to the Republican Party in 1992 **and** a total of $6.3 million in soft money to the Democratic Party. The communication and electronic industry gave more than $3.3 million to the Republicans **and** more than $4 million to the Democrats.[26]

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[25] *Id.* at 839, n.37.

[26] J. Raskin and J. Bonifaz, THE CONSTITUTIONAL IMPERATIVE AND PRACTICAL SUPERIORITY OF DEMOCRATICALLY FINANCED ELECTIONS, 94 Columbia L. Rev. 1160, 1181, n.76 (1994) (citations omitted)(emphasis supplied).

As these authorities make clear, special interests contribute to both parties to purchase influence with both, rather than to support one party over another in order to reflect the agreement of those special interests with the platform of a particular party or a particular candidate. The attempt to purchase pervasive influence with all candidates, in order to wield pervasive influence despite the outcome of the elections, is exactly the type of corruption of the entire process that *Buckley* held the States may attempt to prevent. Because special interest funding of parties erodes the public's confidence in the democratic process, limiting coordinated party expenditures is supported by the compelling interest in preserving the integrity of the democratic process:

> Voter turnout clearly decreases with income and socioeconomic status. This relationship should come as no surprise, since voting is primarily an "affirmation of belonging" to the political system. If it is true, especially for educated citizens that "the most important benefit of voting ... is expressive rather than instrumental," then disproportionate nonvoting among the less-affluent expresses profound alienation from the political and governmental process. The wealth primary [the process of raising and spending campaign cash] is a significant, although certainly not exclusive, cause of this disaffection because it creates both the reality and the appearance of a government

responsive to wealth above all else. In a recent poll, eighty-five percent of Americans stated that they felt that campaign contributions buy the loyalty of candidates, and seventy-four percent said that they believed that Congress is largely owned by private special interests.

> Moreover, the Institute for Southern Studies has found that "people are more likely to vote in states that make registration easy while tightly regulating political contributions."[27]

A political party's capacity to actually funnel "corruptive payments" to its nominees is simply not germane to the dispositive inquiry. This Court should continue to adhere to *Buckley*'s identification of the compelling nature of the States' interest in protecting the public's confidence in the integrity of the electoral process. This Court should reaffirm the holding in *Austin* that the States have a compelling interest in preventing the corrosive effects of immense aggregations of money that have little or no correlation to the contributor's support for the ideas of any candidate or political party. When these interests are recognized, regulating coordinated expenditures by parties is clearly constitutional.

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[27]Raskin and Bonifaz, *supra*, 94 Columiba L. Rev. at 1181-82 (citations omitted).

II. REGULATING COORDINATED EXPENDITURES AS CONTRIBUTIONS IS ESSENTIAL TO FURTHERING THE COMPELLING INTEREST IN PROTECTING THE INTEGRITY OF THE ELECTORAL PROCESS.

Buckley identified contribution limits as essential to furthering the compelling interest in preventing the corruption and the appearance of corruption inherent in a system of unlimited financial contributions. Specifically, the *Buckley* Court held:

> These limitations, along with the disclosure provisions, constitute the Act's primary weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions. The contribution ceilings thus serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.[28]

In upholding the contributions limits as narrowly tailored to support these compelling interests, the *Buckley* Court included coordinated expenditures within the

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[28]424 U.S. at 27.

definition of contributions.[29] Thus, CRC is just plain wrong in stating that: "No previously challenged FECA expenditure limitation imposed upon individuals, political associations or non-business entities has survived First Amendment scrutiny in this Court."[30] *Buckley* explicitly stated:

> In Part I we discussed what constituted a "contribution" for purposes of the contribution limitations set forth in [the Act]. **We construed that term to include not only contributions made directly or indirectly to a candidate,** political party, or campaign committee, and contributions made to other organizations or individuals but earmarked for political purposes, **but also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate. ... So defined, "contributions" have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign.**[31]

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[29]424 U.S. at 35-37, 46, 46 n. 3, 78-79.

[30]Brief for Petitioners at 23.

[31]424 U.S. at 78 (emphasis supplied). The Court also held:

> The expenditure of resources at the candidate's direction...provides material financial assistance to a candidate. The ultimate effect is the same as if the person had contributed the dollar amount to the candidate and the candidate had then used the contribution to pay for [the items]. ...Treating these expenses as contributions when made to the candidate's campaign or at the direction of the candidate or his staff forecloses an avenue of abuse without limiting actions voluntarily undertaken by citizens independently of a candidate's campaign.

424 U.S. at 36-37.

CRC nevertheless attacks the FEC for treating "all party expenditures as 'coordinated,'"[32] implying this approach is unique to the FEC's regulations.[33] But *Buckley* itself analyzed coordinated expenditures as contributions,[34] and this Court's decisions in the cases following *Buckley* uniformly agree that contributions are

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[32]Brief for Petitioners at 35.

[33]Petitioners assert "11 C.F.R. § 110.7(b)(4), cannot alter this result, for the distinction is one of constitutional origin completely unaffected by agency action." Id.

[34]*See* footnotes 6, 8, 29, *supra*, footnote 35, *infra*. Indeed, CRC's statements in this regard are somewhat misleading. CRC states that:

> "No First Amendment challenge to §441a(d) was presented in *Buckley*. This Court, however, perceived the First Amendment issue and made clear that the issue survived the Court's disposition of a Fifth Amendment claim. 424 U.S. at 58 n.66."

Brief for Petitioners at 23. **But**, footnote 66 in *Buckley* did **not** preserve this issue for future adjudication. While the Court did note that Appellants had not challenged the predecessor to § 441a(d) on First Amendment grounds, but only on Equal Protection grounds, the Court clearly upheld similar restraints on coordinated spending. *See* footnote 34, *supra*. The Court did not indicate party expenditures might be viewed differently. *See* footnote 35 *infra*.

properly defined as including: (i) expenditures made for goods or services provided directly to the candidate, and (ii) those expenditures that expressly advocate the election or defeat of a clearly identified candidate which are made in cooperation, consultation or concert with the candidate.[35]

Moreover, *Buckley* and its progeny recognize that political party expenditures are inherently made in cooperation with, with the consent of, or in consultation with the candidate, and; that limitations on party expenditures which advocate the support or defeat of a clearly identified candidate therefore fall squarely within the body of law regulating contributions.[36] In defining "political committees" for the purposes of identifying those groups subject to the disclosure provisions, so that those provisions would not "reach groups engaged purely in issue discussion," *Buckley* held that:

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[35]*See, e.g., FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 29 n.1 (1981); *California Medical Association v. FEC*, 453 U.S. at 199 n.19; *FEC v. Massachusetts Citizens for Life*, 479 U.S. at 259-260.

[36]The Court said:

> Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act. Section 608(b)'s contribution ceilings rather than §608(e)(1)'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions.

424 U.S. at 46-47.

> To fulfill the purposes of the Act [the definition of political committee] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of "political committees" so construed can be assumed to fall within the core area sought to be addressed by Congress. **They are, by definition, campaign related.**[37]

In *FEC v. Democratic Senatorial Campaign Committee*,[38] this Court expressly recognized the expenditures by political parties are inherently coordinated and, therefore, may be limited:

> Expenditures by party committees are known as "coordinated" expenditures and are subject to the monetary limits of § 441a(d). Party committees are considered incapable of making "independent" expenditures in connection with the campaigns of their party's candidates.

In sum, this Court has never equated party expenditures with truly "independent expenditures." This Court has consistently distinguished inherently coordinated expenditures from independent expenditures, and the Court should not retreat from that holding.

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[37]424 U.S. at 79.

[38]454 U.S. 27, 28 n.1 (1981).

Limiting the inherently coordinated contributions of political parties prevents circumvention of the contribution limitations by preventing parties from serving as a conduit for contributors who know their contributions will be expended in support of the candidate as surely as if made directly to the candidate or the candidate's campaign committee.[39] For these reasons, this Court in *California Medical Association v. FEC*, rejected an argument similar to that made by CRC in the instant case:

> We also disagree with appellants' claim that the contribution restriction challenged here [limiting the amount of contributions that a multi-candidate political committee could accept] does not further the governmental interest in preventing the actual or apparent corruption of the political process. Congress enacted §441a(a)(1)(C) in part to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*. ... If appellants' position--that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees--is accepted, then both these contribution limitations could be easily evaded.[40]

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[39]424 U.S. at 47.

[40]453 U.S. 182, 197-198 (1981). In his concurring opinion, Justice Blackmun distinguished between upholding contribution limits to multicandidate committees and to groups organized to make truly independent expenditures:

Finally, CRC claims that limiting party expenditures made to support or defeat a clearly identified candidate inhibits issue advocacy by parties.[41] But, as *Buckley* noted in upholding contribution limits in general, limits on coordinated expenditures leave open the alternative of issue advocacy by the party and of truly independent expenditures by the party's members.[42]

Since contribution limits are essential to furthering the compelling interest in avoiding the reality and the appearance that money buys elections and influence with

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> Multicandidate political committees are therefore essentially conduits for contributions to candidates, and as such they pose a perceived threat of actual or potential corruption. In contrast, contributions to a committee that makes only independent expenditures pose no such threat.

Id. at 203 (Blackmun, J., concurring). *See, also* footnote 36, *supra*.

[41]*See* Brief for Petitioners at 21 ("*Buckley* also stressed that contributors may engage in unlimited independent speech. Unlike individuals and every other political association, political parties are stringently limited by §441a(d) in what they can say in connection with an election").

[42]424 U.S. at 22. "Unshackling political parties" would produce more issue oriented campaigns, according to Petitioners. See Brief for Petitioners at 33. However, since the advent of public financing in Kentucky gubernatorial elections, the opposite has been true. Kentucky treated all political party expenditures which clearly advocated the election of the party's nominee or defeat of his opponent as contributions limited to $500. As a consequence, each political party raised and spent $1 million in old fashioned, party platform, issue advocacy in addition to their nominee's allotted $1.8 million for campaign expenditures. The result was a voter turnout of historic proportions. *See*, The (Louisville) Courier-Journal, Nov 26, 1995, p. D3, Col 1.

the elected, there is no reason to exempt political parties from limits on contributions.

The interest in upholding such limits is especially important in States with public financing. Under these State public financing systems, candidates may choose to accept spending limits and accept public financing, but they need not. They are free to reject spending limitations and to reject the public funding attached to them.

As with Presidential elections, the States' public financing systems are premised on a simple arrangement: in exchange for a voluntary agreement to adhere to campaign spending limits, a candidate receives public funds matching the candidate's private contributions. Because public funding of elections provides the only vehicle under prevailing case law for limiting a candidate's aggregate expenditures, the ability to make an end-run around both contribution and expenditure limits is particularly alarming to States with such legislation. Allowing the candidate's party to make unlimited expenditures advocating the candidate's election or the opponent's defeat would eviscerate both the contribution limits and the voluntary spending limits which accompany public financing. As the three-judge district court held in *Republican National Committee v. FEC:*

> The public interest purposes behind the decision of Congress to provide for the financing of presidential elections would hardly be served unless some reasonable limits and conditions were imposed. If a

> candidate were permitted, in addition to receipt of public funds, to raise and expend unlimited private funds, the purpose of public financing would be defeated. ... **Thus the conditions placed on the expenditure of public funds are necessary to the effectiveness of a program which furthers significant state interests.**[43]

Similarly, a determination by this Court that political parties could make unlimited expenditures on behalf of their candidates would make the public funding option a nullity since the voluntary spending limits could be totally evaded by unlimited party spending.[44]

CONCLUSION

Political parties can easily serve as conduits for the infusion of large quantities of special interest money into the candidate's campaign coffers, directly or by coordinated expenditures. Preventing unlimited party expenditures on behalf of a candidate is, therefore, narrowly tailored to advance the compelling interest in preventing corruption of the electoral process and in

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[43]487 F.Supp. 280, 285-86 (S.D.N.Y.) (three-judge court), *aff'd.*, 445 U.S. 955 (1980) (emphasis supplied).

[44]If this Court invalidates § 441a(d), it should expressly reserve for future decision the question whether a party's nominee's may voluntarily elect to limit the spending not only of the nominee's campaign committee, but also of the nominee's political party.

preventing an end run around contribution limits. This Court should not retreat from its prior holdings that limitations on such coordinated expenditures are narrowly tailored means of furthering the compelling interest in protecting the public's perception of, and confidence in, the integrity of the political process.

Respectfully submitted,

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APPENDIX A

LIMITATIONS ON POLITICAL PARTY CONTRIBUTIONS

STATE NAME	LIMIT
ARKANSAS	Limited to $2,500 per candidate per election.
CALIFORNIA	Limits of $5,000 per candidate per special election or special runoff only.
DELAWARE	Limited by office.
FLORIDA	Party may not contribute to candidate for judicial office. Party limited in contributions to candidates receiving public financing. Generally, $50,000 limit, with no more than $25,000 in last 28 days before general election.
GEORGIA	Limited to $5,000 in the aggregate to statewide candidates in an election year, and $1,000 in the aggregate in a non-election year. Limited to $2,000 in the aggregate to general assembly and other candidates in an election year, and $1,000 in the aggregate in a non-election year.

STATE NAME	LIMIT
HAWAII	Limited to $50,000 for Governor; $40,000 for Lt. Governor; $25,000 for partisan mayor and prosecuting attorney; $20,000 for state senate and partisan offices of county council; $15,000 for state representative.
KENTUCKY	Limited to $500 per slate per election.
MAINE	Limited to $5,000 per candidate per election.
MASSACHUSETTS	State party committees limited to contributions of not more than $3,000 per candidate, per year.
MICHIGAN	State central: $68,000 - , Governor/Lt. Governor, $10,000 - Senate, $5,000 - House, $68,000 - all other state elective offices.

STATE NAME	LIMIT
MINNESOTA	Governor/Lt. Governor: Limited to $20,000 per election year and $5,000 in a non-election year. Attorney General: Limited to $10,000 per election year and $2,000 in a non-election year. Other Statewide offices: Limited to $5,000 per election year and $1,000 in a non-election year. State Senate/State Representative: Limited to $5,000 per election year and $1,000 in a non-election year.
MISSOURI	Limited to $10,000 for a statewide office candidate; $5,000 for a senate candidate; $2,500 for a house candidate; and 10 times allowable individual contribution limit for other candidates.

STATE NAME	LIMIT
MONTANA	All political committees of a political party on the ballot at most recent gubernatorial election, limited for all elections in a campaign to aggregate of $15,000 for Governor/Lt. Governor; $5,000 for other statewide candidates; $2,000 for public service commissioner; $800 for state senator; and $500 for other candidate. Contributions to judicial candidates prohibited.
NEBRASKA	State statewide and legislative candidates are limited to maximum amount of aggregate contributions in election years that may be accepted from independent committees; businesses (including corporations); labor unions; industry, trade, or professional associations; and political parties: Governor - $750,000; Secretary of State, Treasurer, Attorney General, Auditor of Public Accounts - $75,000; Legislature, Public Service Commission, Board of Regents of University of Nebraska & State Board of Education - $25,000.

STATE NAME	LIMIT
NEW HAMPSHIRE	Political party, political committee limited to $1,000 per election if to candidate or political committee working on behalf of a candidate who does not voluntarily agree to limit campaign expenditures; otherwise unlimited.
NEW JERSEY	Political party state committee limited to $1,800 per candidate for governor per primary or general election; unlimited for candidates for non-governor office. County and municipal committees may not contribute to candidate for Governor; also limited in contributions to municipal party committee ($5,000 per year), candidates in other counties, and candidates in certain legislative districts containing county of county committee. Political party national committee limited to $50,000 per year to state party committee; otherwise, subject to PAC limits. Unlimited as to leadership PACs.

STATE NAME	LIMIT
OKLAHOMA	Limited per person or family to $5,000 to a political party committee or political action committee in a calendar year, $5,000 to a candidate/candidate committee for state office or municipal office in a municipality of 250,000 or more for election campaign, and $1,000 to any other local candidate/candidate committee for election campaign.

STATE NAME	LIMIT
OREGON	Political party committees limited to aggregate contributions per election of $25,000 to candidate or principal campaign committee for Governor; $10,000 to candidate or principal campaign committee of candidate for Secretary of State, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of the Bureau of Labor and Industries; $5,000 to candidate for State Senator or State Representative; and $500 to candidate for Judge of Supreme Court, Court of Appeals, or Oregon Tax Court. As a political committee, prohibited from making contributions to other political committees except a candidate's principal campaign committee or political committee not organized exclusively to support or oppose national or party office candidates or measures.
RHODE ISLAND	$25,000 to any one party candidate (no limit on allowable in-kind contributions); unlimited for aggregate contributions to all party candidates.
SOUTH CAROLINA	Limited to $50,000 per statewide candidate per election, $5,000 per other candidate per election.

STATE NAME	LIMIT
TENNESSEE	Limited to $250,000 for statewide office, $40,000 for state senate, and $20,000 for other office in aggregate per election from all party committees.
WASHINGTON	Aggregate contributions per election cycle to state office candidates by a political party or a caucus of the state legislature are limited to 50¢ per voter in district (state legislative office candidate) or state (state executive office candidate) and by a major party county central committee or legislative district committee limited to 25¢ per voter in district (state legislative office candidate) or state (state executive office candidate). County central committees and legislative district committees may contribute for only those state legislative offices that include their jurisdiction. Aggregate contributions made by a single contributor other than a bona fide political party state organization within 21 days of a general election may not exceed $50,000 for a statewide office campaign or $5,000 for any other campaign.

STATE NAME	LIMIT
WEST VIRGINIA	Limited to $1,000 per candidate, per primary or general election, and $1,000 to state party executive committee per calendar year.
WISCONSIN	Unlimited; however, a political party or legislative campaign committee that files a statement under oath concerning independent candidate-related disbursements becomes subject to the limit for PACs. A candidate may not receive more than 65% of authorized disbursement level from all political committees.

Source: CAMPAIGN FINANCE LAW 96, Edward D. Geigenbaum and James A. Palmer, National Clearinghouse on Election Administration, Federal Election Commission.

APPENDIX B

EXPENDITURE LIMITS FOR CANDIDATES ACCEPTING PUBLIC FINANCING

STATE NAME	OFFICE
FLORIDA	Governor/Lt. Governor Secretary of State Attorney General Treasurer Comptroller Comm. of Agriculture
HAWAII	Governor Lt. Governor State Senate State House County
KENTUCKY	Governor Lt. Governor
MICHIGAN	Governor Governor/Lt. Governor
MINNESOTA	Governor/Lt. Governor Secretary of State Attorney General Treasurer Auditor State Senate State House
NEW JERSEY	Governor
RHODE ISLAND	Governor

STATE NAME	OFFICE
WISCONSIN	Governor Lt. Governor Secretary of State Attorney General Treasurer State Senate State House
PUERTO RICO	Governor

Source: COGEL BLUE BOOK, 9TH EDITION, CAMPAIGN FINANCE, ETHICS, LOBBY LAW & JUDICIAL CONDUCT, The Council of State Governments, Council on Governmental Ethics Law, May, 1993.